

HOUSE BILL 3004

By Eckles

AN ACT relative to persons with mental illness, serious emotional disturbance, mental retardation, and developmental disabilities and providing for rights, duties, powers, liabilities, and related provisions, and specifically amending Tennessee Code Annotated titles 4, 33, and 37, and others that cite title 33.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The department of mental health and developmental disabilities serves as the state's mental health and developmental disabilities authority and is responsible for system planning, setting policy and quality standards, system monitoring and evaluation, disseminating public information and advocacy for persons of all ages who have mental illness, serious emotional disturbance, or developmental disabilities. It is the policy of the state to plan on the basis of and to promote the use of private and public service providers, without regard for funding source, to achieve outcomes and accomplishments that create opportunities for service recipients and potential service recipients to have the greatest possible control of their lives in the least restrictive environment that is appropriate for each person. The department shall plan for and promote the availability of a comprehensive array of high quality prevention, early intervention, treatment, and habilitation services and supports based on the needs and choices

of service recipients and families served. The department shall include service recipients and members of service recipients' families in planning, developing, and monitoring the service systems.

SECTION 2. Tennessee Code Annotated, § 4-3-1601, is amended by deleting it in its entirety and substituting the following :

There is created the department of mental health and developmental disabilities. The general functions of the department are to coordinate, set standards for, plan for, monitor, and promote the development and provision of services and supports to meet the needs of persons with mental illness, serious emotional disturbance, or developmental disabilities through the public and private sectors in this state as set out in title 33.

SECTION 3. Tennessee Code Annotated, § 4-3-1602(a), is amended by deleting it in its entirety and substituting the following:

The department of mental health and developmental disabilities shall be in the charge of a commissioner, who shall be appointed by the governor in the same manner as are other commissioners and who shall have the same official status as other commissioners.

SECTION 4. Tennessee Code Annotated, § 4-3-1602(c), is amended by deleting the words "or mental retardation" and by substituting the words and punctuation marks ", serious emotional disturbance, or developmental disabilities" and is further amended by deleting the words and punctuation "human development, mental retardation" and by substituting the words and punctuation "human development, developmental disabilities,".

SECTION 5. Tennessee Code Annotated, § 4-3-1603, is amended by deleting it in its entirety and substituting the following:

(a) The department of mental health and developmental disabilities has exclusive jurisdiction and control over the mental health and developmental disabilities facilities of the state, regardless of the names by which the facilities are known.

(b) The department, through its appropriate officials, has the duty and power to provide the best possible care for persons with mental illness, serious emotional disturbance, or developmental disabilities in the state by improving existing facilities, by the development of future facilities and programs, and by the adoption of a preventive program for mental illness, serious emotional disturbance, and developmental disabilities, all as provided in title 33.

SECTION 6. Tennessee Code Annotated is amended by deleting, wherever it appears, the phrase “department of mental health and mental retardation,” and by substituting instead the phrase “department of mental health and developmental disabilities.”

SECTION 7. Tennessee Code Annotated, § 33-3-203, is amended by transferring it to title 37, chapter 1, part 1, and by deleting it in its entirety, and by substituting the following:

37-1-175

IF AND ONLY IF

- (1) A child is the subject of a proceeding under title 37, chapter 1, AND
- (2) The child is mentally ill, AND
- (3) The child needs care, training, or treatment because of the mental illness, AND
- (4) All available less drastic alternatives to committing the child to the temporary legal custody of the department are unsuitable to meet the child's needs for care, training, or treatment for the mental illness,

THEN

- (5) A juvenile court may commit the child to the temporary legal custody of the department in proceedings conducted in conformity with §§ 33-3-602--33-3-608, 33-3-610--33-3-620,

and 33-6-505--33-6-508, to meet the child's needs for care, training, or treatment for the mental illness.

37-1-176

IF

- (1) A juvenile court commits a child to the temporary legal custody of the department under § 37-1-175,

THEN

- (2) The department shall provide the necessary care, training, or treatment for the child in the least drastic alternative way which is available and suitable to meet the child's needs, AND
- (3) Community mental health centers and community programs which receive grants or contracts from the department to provide such services to children shall, at the direction of the department, provide the community-based services necessary to meet the child's needs for treatment in the least drastic alternative to hospitalization, AND
- (4) IF AND ONLY IF

- (A) Placing the child in inpatient care in a hospital or treatment resource is the least drastic alternative way which is available to the department and is suitable to meet the child's needs,

THEN

- (B) The department shall apply for the child's admission to a hospital or treatment resource under title 33, chapter 6, part 2 or 4 or shall initiate proceedings under title 33, chapter 6, part 5.

37-1-177

If an evaluation under § 37-1-128(d) shows that a child may be subject to commitment to the temporary legal custody of the department, the juvenile court may direct any person it determines to be suitable for the purpose to file a complaint under § 37-1-175.

#### 37-1-178

If a child no longer meets the standards under which the child was hospitalized or admitted to a treatment resource under § 37-1-176, subdivision (4), the child shall be discharged under chapter 6, part 7, and the child shall remain in the custody of the department until the department's custody is terminated under §§ 37-1-179--37-1-180.

#### 37-1-179

If a child no longer meets the standards under which the child was committed to the custody of the department under § 37-1-175, the department shall make a full report of the status of the child to the committing court. If the committing court objects to the termination of the department's custody, the court shall set a hearing on the matter within fifteen (15) days of the date of the report, with such hearing to be held at the earliest possible date. The department shall retain custody pending the outcome of the hearing. If the court does not set a hearing, the department's custody terminates at the end of the fifteenth day after the date of the report unless the court has approved an earlier termination.

#### 37-1-180

If the court sets a hearing to review the status of the child under § 37-1-179, the child shall have the same rights as in the original commitment proceeding under §§ 33-3-605, 33-3-608, 33-3-610--33-3-616, and 33-3-620. If and only if the court finds on the basis of clear, unequivocal, and convincing evidence that the child is subject to commitment to the custody of the department under § 37-1-175, the court may order that the child remain in the temporary legal custody of the department. If the court does not so find, the department's custody terminates at the end of the hearing.

#### 37-1-181

Proceedings under §§ 37-1-175--37-1-181 may be held only by judges who are lawyers or by referees.

SECTION 8. The Tennessee Code Commission is directed to correct or delete, as appropriate, references in other titles of the Code to provisions affected by this act as follows:

- A. References to .§ 33-6-103 shall be changed to read "title 33, chapter 6, part 4";
- B. References to "pose a likelihood of serious harm as defined in § 33-6-104" shall be changed to "pose a likelihood of serious harm as defined in § 33-6-501";
- C. References to § 33-6-104 as a whole shall be changed to read "title 33, chapter 6, part 5";
- E. References to § 33-6-101 shall be changed to read "§ 33-6-201";
- F. References to any part of § 33-1-101 by subdivision shall be changed to read "§ 33-1-101";
- G. References to § 33-3-203 shall be changed to read "§ 37-1-175";
- H. References to § 33-5-305 shall be changed to read "§ 33-5-402";
- I. References to § 33-5-105 shall be changed to read "§ 33-2-417";
- J. References to § 33-5-306 shall be changed to read "§ 33-5-406";
- K. References to § 33-1-209(c) shall be changed to read "§ 33-2-1202";
- L. References to title 33, chapter 2, part 5 shall be changed to read "title 33, chapter 2, part 4";
- M. References to § 33-2-502 shall be changed to read "§ 33-5-402"; and
- N. References to § 33-4-102 shall be changed to read "§ 33-2-1202".

SECTION 9. This act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

SECTION 10. If any provision of this act or the application of it to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. For the purposes of gathering necessary information for rule-making and planning and for adopting rules to implement section 1 of this act in accordance with Tennessee Code Annotated, title 4, chapter 5, this act shall take effect upon becoming a law, the public welfare requiring it. Sections 2 through 10 of this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect on March 1, 2001.